

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

SHANISHA L. SAULSBERRY,

Apellant

v.

U.S. TOY COMPANY, INC..

Respondent

DOCKET NUMBER WD77562

DATE: AUGUST 11, 2015

Appeal From:

Circuit Court of Jackson County, MO
The Honorable David Michael Byrn, Judge

Appellate Judges:

Division Three
Karen King Mitchell, P.J., Lisa White Hardwick, and Anthony Rex Gabbert, JJ.

Attorneys:

Edward Robertson, Nimrod Thomas Chapel, Anthony Louis Dewitt, Michael Christopher Rader,
Jefferson City & Leawood KS, Counsel for Apellant

Attorneys:

James W. Fletcher, Jo Stephanie Warmund, Kansas City, MO Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

SHANISHA L. SAULSBERRY, Apellant, v.
U.S. TOY COMPANY, INC., Respondent

WD77562

Jackson County

Before Division Three Judges: Karen King Mitchell, P.J., Lisa White Hardwick, and Anthony Rex Gabbert, JJ.

Shanisha L. Saulsberry appeals the circuit court's judgment entered upon a jury verdict finding in favor of Saulsberry on her negligence claim against U.S. Toy Company, Inc. (U.S. Toy). Saulsberry contends that the circuit court erred: (1) in excluding evidence of her medical expenses; (2) in not conducting an evidentiary hearing pursuant to Section 490.715, RSMo Cum. Supp. 2013, and *Deck v. Teasley*, 322 S.W.3d 546 (Mo. banc 2010); (3) in admitting, over her objection, the hearsay testimony of Dr. Jay Zwibelman; (4) in admitting, over her objection, the hearsay testimony of Dr. Bernard Abrams, and; (5) in refusing to admit the economist's report.

AFFIRMED.

Division Three holds:

- (1) The circuit court did not abuse its discretion in excluding from evidence as unseasonable and prejudicial various medical expenses that Saulsberry attempted to submit three days prior to trial and after trial was to have already commenced. Saulsberry averred to the court that all such expenses were contained in a CD provided to U.S. Toy and the court ordered her bound by that averment.
- (2) The circuit court did not err in failing to conduct a hearing pursuant to Section 490.715 and *Deck v. Teasley*. Section 490.715 does not unequivocally require a hearing and we find no hearing necessary where the only evidence intended to be submitted at the hearing is not admissible at trial.
- (3) The circuit court did not abuse its discretion in admitting the testimony of Dr. Zwibelman. Saulsberry herself admitted Exhibit 113, from which Zwibelman's testimony was derived, into evidence and counsel's reference to secondary gain was not prejudicial.
- (4) Saulsberry has failed to preserve for review her claim regarding Dr. Abrams's testimony.
- (5) The circuit court did not abuse its discretion in excluding the economist's report as we find no cumulative errors contributing to the exclusion of the economist's report and no prejudice.

Opinion by: Anthony Rex Gabbert, Judge

Date: 8/11/15

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
